

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 68

This is in response to a disclosure of interest filed by Senior Construction Inspector X, hereinafter referred to as inspector, wherein he and his wife have pecuniary interest in joint ventures which have several land development projects in this county.

We are of the opinion that there is no violation of any standards of conduct.

We understand the salient facts to be as follows:

1. The inspector is employed as a Senior Construction Inspector by the Department of Public Works and assigned to the Division of Engineering.
2. The Division of Engineering approves all drainage systems and roadways within a subdivision, including issuance of a grading permit if grading work is contemplated in connection with the land development.
3. The inspector is assigned to land development projects occurring on the eastern half of this island but primarily to the urban areas rather than the outlying suburban areas dealing with public construction.
4. As an inspector, his primary duties and functions are to oversee that any private contractor who constructs drainage and roadway systems meets all construction specifications.
5. Although the inspector sees to it that the contractor adheres to all the construction specifications, the ultimateness is a test conducted in laboratories upon various aspects of the construction work such as using cores from roadways to test whether the contractor has met the specifications, or compression test for cement used in lining the drainage systems.
6. The inspector stated that he and his wife first entered into the joint ventures approximately 20 years ago with the initial sum of \$4,000.
7. The inspector has no duty or responsibility in the Division to review preliminary construction plans of the foregoing systems.

Under the foregoing facts, the primary question is whether the pecuniary interest held by the

inspector in the joint ventures dealing with land development would impair his judgment in carrying out his duties and responsibilities as a Senior Construction Inspector of subdivision developments.(See RCH Section 10-102.3.)

Another standards of conduct provision which may be in issue is whether or not the inspector is in a position to give special consideration or special treatment to the land development in which he has a pecuniary interest. (See RCH Section 10-104.)

Also, his position may enable him to disclose confidential information which is not generally available to the public.(See RCH Section 10-102.2.)

With respect to the incompatibility issue, we find that there is no likelihood that the judgment of the inspector would be impaired because of his pecuniary interest in the joint ventures relating to land development because (1) he has no specific duty or responsibility to review preliminary construction plans for subdivision purposes; (2) he is assigned to inspection work in the urban area which generally deals with public construction work; and (3) according to the inspector, all construction work is subject to final laboratory tests to determine whether or not the contractor has met construction specifications. Therefore, we conclude that the inspector would not be involved in a situation where his pecuniary interest would override the public interest.

Since the inspector stated that he generally does not inspect land development projects and is confined to construction work within the urban area, his opportunity to give special consideration to the land development *hui* he has a pecuniary interest in is remote. Assuming he were given the duty and responsibility to inspect construction work of the drainage and road systems within land development projects in which he has a pecuniary interest, it is likely that he would not attempt to favor such land development because the construction work done within the subdivision is ultimately subjected to laboratory tests by the taking of numerous test scores of the cement that is used in lining the drainage system or the materials used in the roadway. Therefore, to render special consideration or special treatment to the subdivision in which he has a pecuniary interest would require the cooperation of the testers of such cores.

As a Senior Construction Inspector, he stated that he has no opportunity to review preliminary construction plans that are submitted to the Division of Engineering for its review and approval. Consequently, we are of the view that he would have no opportunity to have confidential information which can be used for the benefit of his land *hui*.

Based on the foregoing, we conclude that the possibility of any violation of the applicable standards of conduct provisions under the foregoing facts is remote, and therefore we make no recommendation as to whether the inspector should withdraw from the land *hui* in which he has a pecuniary interest.

Dated: Honolulu, Hawai'i, February 15, 1971.

ETHICS COMMISSION
Nathaniel Felzer, Chairman